IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.76 OF 2004

Gundopant A. Jadhav & another ...Appellants

Vs.

Atmaram R. Jadhav
(since deceased through heirs) & Ors. ...Respondents

Mr.J.N.Pawar with Smt.L.B.Patne for the Appellants

CORAM: A.S.OKA,J.
DATE : FEBRUARY 23, 2005.

P.C.:

1. Heard Counsel appearing for the parties. There is a concurrent finding of fact that the Appellants have encroached upon the property of the Respondent/Plaintiff. The Appellate Court noted that there is no dispute between the parties that the original Plaintiff is owner of C.T.S.No.1023. The learned Counsel for the Appellants submitted that the evidence of surveyor shows that on the map prepared by him after the survey, the encroachment allegedly made by the Appellants is not shown. He submitted that the surveyor admitted that there is nothing on record to show that the adjoining lands were also measured including the land of the Appellants. He, therefore, submitted that in view of the clear admission given by the surveyor, decree for encroachment could not have been passed. He submitted that as the Appellants are in long standing possession of the suit property, the findings on the

issue of adverse possession should have been recorded in their favour.

2. It is to be noted here that the surveyor who has been examined is not the person who has carried out the survey. Secondly, it is an admitted position that the Appellant No.1 received a notice of the date fixed for survey. However, he remained absent. The surveyor's map itself shows that the owners of the adjoining property were present and their names are also mentioned. Moreover, the surveyor's map discloses the location and demarcation of the encroached portion.

3. In this view of the matter, no fault can be found with the findings of the courts below.

4. As regards plea of adverse possession is concerned, there is no assertion of hostile title as against the original Plaintiff. Assuming that the Appellants were in long standing possession that itself will not prove the adverse possession.

5. No substantial question of law arises. Appeal is dismissed with no order as to costs.

JUDGE.